

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7490 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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BHANUSHALI MADHAVJI @

MADHIYO GOVINDBHAI KATARMAL

Versus

STATE OF GUJARAT

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Appearance:

MS SUBHADRA G PATEL for Petitioner

MR DG JOSHI, AGP, for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 01/12/1999

ORAL JUDGEMENT

#. The petitioner was detained under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA Act" for short), by an order passed by District Magistrate, Jamnagar, on 10th March, 1999.

#. The ground of detention indicate that the petitioner was involved in 14 offences punishable under Bombay Prohibition Act and 2 offences punishable under

Indian Penal Code, Bombay Police Act, etc. The detaining authority also considered the statements of four witnesses in relation to unregistered offences. In the grounds of detention, the detaining authority recorded that surety of good behavior was taken from the detenu on June 20, 1996 for six months. But thereafter also, he was involved in offences registered vide C.R. No.641/96, 756/96 and 807/96 besides several other offences. Considering various aspects, including the above stated factors, the detaining authority recorded a subjective satisfaction that the detenu is a bootlegger and a dangerous person as defined under the PASA Act and after considering alternative less drastic remedy, concluded that detention under PASA Act was the only remedy that can be resorted to for immediately preventing the petitioner from pursuing his illegal activities.

#. The petitioner in this petition has challenged the order of detention on various counts. In paragraph 10 of the petition, the petitioner has contended that the detaining authority considered and relied upon cases in respect of C.R. No.641/96, 756/96 and 807/96 in the grounds of detention but the detaining authority has not supplied the material in relation to these cases. This has, therefore, affected the right of the petitioner of making an effective representation.

#. Ms. Patel, learned advocate appearing for the petitioner, has reiterated the above grounds and submitted that non-supply of documents has resulted into denial of a constitutional right of making an effective representation. The petition may, therefore, be allowed.

#. The petition is opposed by learned Assistant Government Pleader, Mr. Joshi.

#. While going through the index of the documents supplied to the petitioner at the time of detention, it appears that the detaining authority has supplied documents relating to C.R. No.807/96. However, documents relating to C.R. No.641/96 and 756/96 do not appear to have been supplied to the detenu by the detaining authority. It also appears that no details relating to the "other offences" alleged to have been committed by the detenu is furnished. In this view of the matter, the contention raised by the detenu that non-supply of these documents has resulted into denial of right of making an effective representation has to be accepted since not disputed by the other side. It is a settled proposition of law that, if documents relied upon by the detaining authority while passing the order of

detention are not supplied to the detenu, it deprives the detenu of a right of making an effective representation granted under Article 22(5) of the Constitution and that vitiates the detention. The order of detention in the present case also would stand vitiated. The petition, therefore, merits allowance.

#. For the foregoing reasons, the petition is allowed. The order of detention dated 10th March, 1999, in respect of the petitioner-Bhanushali Madhavji alias Madhiyo Govindbhai Katarmal is hereby set aside. The petitioner-detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

[ A.L. DAVE, J. ]

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